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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/647,138	08/22/2003	Michael A. Hesse	HLX1-009	1048
28661	7590	05/27/2004	EXAMINER	
SIERRA PATENT GROUP, LTD. P O BOX 6149 STATELINE, NV 89449			FERNSTROM, KURT	
			ART UNIT	PAPER NUMBER
			3712	
DATE MAILED: 05/27/2004				

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/647,138	HESSE, MICHAEL A.	
	<b>Examiner</b>	<b>Art Unit</b>	
	Kurt Fernstrom	3712	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☐ Responsive to communication(s) filed on \_\_\_\_.
- 2a) ☐ This action is FINAL. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-19 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-19 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.

### Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)  
Paper No(s)/Mail Date \_\_\_\_.
- 4) ☐ Interview Summary (PTO-413)  
Paper No(s)/Mail Date \_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_.

## DETAILED ACTION

### ***Claim Rejections - 35 USC § 112***

The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-19 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.. Claim 1 recites a "Natural" hand that pyas a bonus, and defines the Natural as "not any ace and not any card with a value of ten". As written, claim 1 precludes hands including aces or tens (or face cards) from being Naturals. However, claims 2-8 and 12-17 recite Naturals including aces. These claims are inconsistent with claim 1, as written.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-8, 10-17 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Brown in view of Wisted. Brown discloses a method of playing a blackjack game. Many of the steps recited in claim 1 are standard blackjack steps which are well known. Brown discloses in column 4, lines 9-21 that a specific type of

Art Unit: 3712

"natural hand" can be predetermined, including an ace and jack of the same suit, or an ace of hearts and jack of spades or some other specific combination, which beats other hands and pays a bonus. Brown fails to disclose a game where hands that exceed 21 do not always lose. Wisted discloses in column 4, lines 20-35 a method of playing a blackja-like game where hands that exceed 21 do not always lose. It would have been obvious to one of ordinary skill in the relevant art to modify the game method disclosed by Brown by providing a step where hands that exceed 21 do not always lose for the purpose of allowing players who exceed that total to retain a chance to win, thereby increasing that player's interest in the game. With respect to claims 2 and 11, Official Notice is taken that it is well known for both a player and a casino to act as a dealer. With respect to claims 3-5 and 12-14, Wisted discloses a game where two aces comprise the best hand. It would have been obvious to one of ordinary skill in the relevant art to modify the game method disclosed by Brown by providing a step where a hand of 22 wins for the purpose of allowing the game to be played in jurisdictions which outlaw traditional blackjack (see col. 1, lines 18-32). With respect to claims 7 and 16, making an ace and jack of the same color a winning hand is an obvious variation on the teaching of Brown that an ace and jack of the same suit comprises a winning hand. With respect to claims 10 and 19, Wisted suggests in column 4, lines 32-35 that a player who ties the dealer over 21 receives their bet back.

***Allowable Subject Matter***

Claims 9 and 18 would be allowable if rewritten to overcome the rejection(s) under 35 U.S.C. 112, second paragraph, set forth in this Office action and to include all of the limitations of the base claim and any intervening claims.

The following is a statement of reasons for the indication of allowable subject matter: The prior art fails to disclose or suggest a game method having all of the steps of the claims. In particular, there is no suggestion of the step of a player who ties the dealer above 21 winning the wager. In conventional blackjack games a player who ties the dealer "pushes"; that is, receives their bet back. Card games, particularly those played in casinos, are set up to allow the dealer to have a built-in advantage, or at least break even. There is no motivation disclosed in the prior art to put the dealer at a disadvantage by allowing a player to win their wager when they tie with the dealer. As a result, claims 9 and 18 contain allowable subject matter.

### ***Conclusion***

The prior art made of record and not relied upon is considered pertinent to applicant's disclosure. Potter, Yuan, Green, Groussman, Savage, Webb, and Jones disclose various card games.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kurt Fernstrom whose telephone number is (703) 305-0303. The examiner can normally be reached on M-F 9:30-6:00.

Art Unit: 3712

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Derris Banks can be reached on (703) 308-1745. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

KF  
May 25, 2004

*Kurt Ferston*  
Kurt Ferston